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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES D. ALLEN,

12 Petitioner,

13 vs.

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15 L.E. SCRIBNER, Warden, et al.,

16 Respondent.
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CASE NO. 07-CV-1746-H (AJB)

ORDER:

(1) DENYING AS MOOT
MOTION FOR ADDITIONAL
TIME TO FILE NOTICE OF
APPEAL; AND

(2) DENYING MOTION FOR A
CERTIFICATE OF
APPEALABILITY

18 On July 16, 2008, the Court dismissed the petition because it presented a mix of
19 exhausted and unexhausted claims, and Petitioner was unwilling to abandon the
20 unexhausted claims. (Doc. No. 28.) The order was entered on July 17, 2008. (*Id.*) On
21 August 19, 2008, the Court received Petitioner's notice of appeal along with two
22 motions: (1) a motion for an extension of time to file his notice of appeal; and (2) a
23 motion for a certificate of appealability. (Doc. Nos. 30-32.)

24 **Discussion**

25 **I. Extension of Time**

26 The Court concludes that Petitioner's notice of appeal is timely, so the request
27 for an extension of time is moot. Generally, the notice of appeal in a civil case is due
28 30 days after a court enters the judgment or order appealed from. Fed. R. App. P.
4(a)(1)(A). For an inmate confined in an institution, "the notice is timely if it is

1 deposited in the institution's mail system on or before the last day for filing." Fed. R.
2 App. P. 4(c)(1). The Court entered its order on July 17, 2008, and Petitioner filed a
3 verification that he placed his notice of appeal in the prison mail system on August 16,
4 2008. Under Fed. R. App. P. 4(c)(1), therefore, he filed the notice within 30 days.
5 There is no need to extend time, and the Court denies Petitioner's motion for additional
6 time as moot.

7 **II. Certificate of Appealability**

8 A certificate of appealability requires "a substantial showing of the denial of a
9 constitutional right." 28 U.S.C. § 2253(c)(2). The Court concludes that Petitioner does
10 not meet this standard and denies the request for a certificate of appealability.

11 **Conclusion**

12 The Court concludes that the notice of appeal is timely and denies the motion for
13 additional time as moot. The Court denies the request for a certificate of appealability.

14 IT IS SO ORDERED.

15 DATED: August 21, 2008

16 
17 MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

18 COPIES TO:
19 All parties of record.
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